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## REMARKS

This is responsive to the Office Action dated 11/28/2006. Reconsideration is requested.

The claims now in the case are claims 1-10.

Claims 9 and 10 were rejected under 35 USC 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which applicant regards as the invention. In line 5 of each of these claims, the term "the pointed end" was said to lack antecedent basis. This term has been amended to "the pointed tip", which clearly has antecedent basis. It is thus considered that the rejection may be withdrawn.

Claims 1, 3, and 5 were rejected under 35 U.S.C. 102(b) as being anticipated by Wallock et al. This rejection is traversed.

In order for a rejection based on 35 U.S.C. 102 to be sustainable, each limitation set forth in the claims must be shown by the reference. The rejected claims recite in element "c" that the container is open and contains a plurality of prongs. Reading this in light of the written description and drawings it is clear that this limitation calls for an open container as opposed to a closed container or an uncovered container as opposed to a covered container. The container of Wallock et al. is a complex device. There is a closed container which contains what the examiner calls prongs. There is an open container which has no prongs. The "top" which is recited in the claims is clearly a reference to the location, not a covering. Since the claimed device is required to be open and to contain prongs and since the device of the reference either contains two closures and "prongs" or is open and does not contain prongs, it is applicant's position that the Wallock et al. reference fails to anticipate claims 1, 3, and 5. Should it be the examiner's

opinion that the container or housing 17 of the reference constitutes the open container called for by the claims then the rejection must fail because this container is closed. Should it be the examiner's opinion that the safety collar or guard 45 of the reference constitutes the open container called for by the claims then the rejection must fail because this open container does not contain an interior surface containing a plurality of prongs. Withdrawal of this rejection is solicited.

Claims 2, 4, and 6 were rejected under 35 USC 103(a) as being unpatentable over Wallock et al. in combination with Williams. The teachings of these references and the application of these teachings to the claims are found in paragraph 6 of the Office Action. This rejection is traversed.

As in the previous response, the four formal Graham factual inquiries and the three substantive tests set forth in Section 2143 of the M.P.E.P. will be looked to in order to determine the correctness of the rejection.

The first Graham factual inquiry is determining the scope and content of the prior art. It is applicants' position that the examiner has properly determined the scope and content of the cited prior art. The examiner has accurately stated what the prior art teaches. It is considered that the first Graham factual inquiry has been met.

The second Graham factual inquiry is ascertaining the differences between the prior art and the claims in issue. It is believed that this factual inquiry applies to only the primary reference. The examiner's attempt at this factual inquiry was to state the things which are not taught by the primary reference. This list is too short. It does not include the limitation of an open container wherein the interior surface contains a plurality of

prongs. It does not include the limitation of a textured exterior surface as called for by claim 2. Thus, it is considered that the second Graham factual inquiry has not been met.

The third Graham factual inquiry is resolving the level of ordinary skill in the pertinent art. The examiner has completely ignored this issue. It is impossible to determine if an invention would have been obvious to one of ordinary skill in the art in the absence of an understanding of the level of skill possessed by one of ordinary skill in the art. Since the examiner has continually refused to address this issue, applicant will attempt to complete the record and define the level of ordinary skill. A person of ordinary skill in the art is assumed to be a dental technician. The level of skill possessed by this person is assumed to be completion of dental technician educational training and three years of experience as a dental technician.

The fourth Graham factual inquiry is evaluating evidence of secondary considerations. There is no such evidence in the present application.

The first basic requirement laid down by the M.P.E.P. is that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the teachings of the references. Regarding this basic requirement, the examiner stated that it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the gauze taught by Williams in the Wallock et al. container to improve the cleaning. The examiner has not pointed to any teaching in either of the references which positively sets out this motivation. Therefore, this obviousness is assumed to be a result of some knowledge generally available to one of ordinary skill in the art. The examiner is called upon to present an affidavit described in 37 CFR 1.104(c)(3) setting forth clearly and

precisely the facts which are available to those skilled in the art and which are relied upon by the examiner. In the absence of such an affidavit, it must be assumed that the examiner has not met the first requirement set out in the above-cited Section of the M.P.E.P.

The second basic requirement is that there must be a reasonable expectation of success resulting from combining the references. The expectation of success is seen to be coupled with the location of the gauze in the modified Wallock et al. device. If the gauze goes in the bottom of the closed container and fits on the inner surface of the wall to absorb the chemical reagent as this is its function in the prior art, it would not serve to remove any contaminants remaining on the instrument. Indeed, it would not come in contact with the dental instruments. If it replaces the bristles of the closed container of the Wallock et al. device, there would be no prongs as the examiner equates the bristles of Wallock et al. with prongs. If it would be in the closed container portion of the Wallock et al. device in addition to the bristles, the pointed tip of the dental instrument could not get to the liquid chemical reagent in the bottom of the device. If the gauze was located in the open portion of the Wallock et al. device, it would not stay there because there is nothing in the Wallock et al. device to keep the gauze in place. It is thus considered that there would be no reasonable expectation of success resulting from the combination of cited references.

The third basic requirement is that the prior art references must teach or suggest all the claim limitations. The claims call for a finger rest 4. The primary reference does not contain any such component. The claims call for a stem. The part of the primary reference which could come close to this part is the housing 17. The claims call for an

open container having an exterior surface, an interior surface, and a top. This could be seen to correspond to the collar guard 45 of the primary reference. The claims call for a girth near the top. No component of the prior art resembles this part. The claims require that the interior surface of the container contains prongs. The examiner stated that the Wallock et al. reference teaches a device for cleaning dental instruments comprising a container containing bristles. Somehow, the bristles of the reference are equated with the prongs of the invention. The bristles of the Wallock et al. reference would not be on the interior surface of the open container of the claimed device. Rather, they would be in the stem portion of the claimed device. Claim 4 requires that the container contains gauze. The examiner has not been precise as to where the gauze of the Williams reference would go in the device of Wallock et al. The discussion relating to the second basic requirement is pertinent here. It is considered that the third basic requirement of the M.P.E.P. has not been met. Withdrawal of this rejection is deemed proper.

Claims 7-10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Cerroni in combination with Wallock et al. and Williams. The examiner' discussion of this rejection bridges pages 3-5 of the Office Action. This rejection is traversed.

The first Graham factual inquiry is determining the scope and content of the prior art. It is applicants' position that the examiner has properly determined the scope and content of the cited prior art. The examiner has accurately stated what the prior art teaches. It is considered that the first Graham factual inquiry has been met.

The second Graham factual inquiry is ascertaining the differences between the prior art and the claims in issue. The examiner's attempt at this factual inquiry was to state the things which are not taught by the Cerroni reference. This list is too short. It

does not include a device for cleaning dental instruments comprising a finger rest, a stem, an open chamber having an exterior surface, an interior surface having prongs, a top, and a top protective rim. It does not include the limitation of claim 8 wherein the exterior surface of the open container is made of hard plastic and the interior surface of the open container is made of soft plastic.

The third Graham factual inquiry is resolving the level of ordinary skill in the pertinent art. Should the examiner agree that one skilled in the art would be a dental technician and the level of skill possessed by this person is assumed to be completion of dental technician educational training and three years of experience as a dental technician, the third Graham factual inquiry would be considered to be resolved. Otherwise, the examiner may define who would be a person skilled in the art and the education and experience possessed by this person.

The fourth Graham factual inquiry is evaluating evidence of secondary considerations. There is no such evidence in the present application.

The first basic requirement laid down by the M.P.E.P. is that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the teachings of the references. The examiner stated that it would have been obvious for one skilled in the art to use the gauze taught by Williams and the girth and prongs taught by Wallock et al. in the Cerroni container to enhance the cleaning. The examiner has not pointed to any teaching in either of the references which positively sets out this motivation. Therefore, as above, this obviousness is assumed to be a result of some knowledge generally available to one of ordinary skill in the art. The examiner is again called upon to present

an affidavit described in 37 CFR 1.104(c)(3) setting forth clearly and precisely the facts which are available to those skilled in the art and which are relied upon by the examiner. In the absence of such an affidavit, it must be assumed that the examiner has not met the first requirement set out in the above-cited Section of the M.P.E.P.

The second basic requirement is that there must be a reasonable expectation of success resulting from combining the references. The expectation of success is seen to be coupled with the location of the gauze in the modified Wallock et al. device. If the gauze goes in the bottom of the closed container and fits on the inner surface of the wall to absorb the chemical reagent as this is its function in the prior art, it would not serve to remove any contaminants remaining on the instrument. Indeed, it would not come in contact with the dental instruments. If it replaces the bristles of the closed container of the Wallock et al. device, there would be no prongs as the examiner equates the bristles of Wallock et al. with prongs. If it would be in the closed container portion of the Wallock et al. device in addition to the bristles, the pointed tip of the dental instrument could not get to the liquid chemical reagent in the bottom of the device. If the gauze was located in the open portion of the Wallock et al. device, it would not stay there because there is nothing in the Wallock et al device to keep the gauze in place. It is thus considered that there would be no reasonable expectation of success resulting from the combination of cited references.

The third basic requirement is that the prior art references must teach or suggest all the claim limitations. The claims call for a finger rest 4. The references do not contain any such component. The claims call for a stem. The part of the Wallock et al. reference which could come close to this part is the housing 17. The claims call for an

open container having an exterior surface, an interior surface, and a top. This could be seen to correspond to the collar guard 45 of the Wallock et al. reference. The claims call for a girth near the top. No component of the prior art resembles this part. The claims require that the interior surface of the container contains prongs. The examiner stated that the Cerroni and Wallock et al. references teach devices for cleaning dental instruments comprising containers containing bristles. Somehow, the bristles of the reference are equated with the prongs of the invention. It is not clear just why the examiner would use the bristles of Wallock et al. in place of the bristles of Cerroni. The bristles of the Wallock et al. reference would not be on the interior surface of the open container of the claimed device. Rather, they would be in the stem portion of the claimed device. Claims 9 and 10 require that the container contains gauze. The examiner has not been precise as to where the gauze of the Williams reference would go in the device of Wallock et al. The discussion relating to the second basic requirement is pertinent here. Claim 8 requires that the exterior surface of the open container is made of hard plastic and the interior surface of the open container is made of soft plastic. This feature has not been shown. It is considered that the third basic requirement of the M.P.E.P. has not been met. Withdrawal of this rejection is deemed proper.

In view of the above it is believed that claims 1-10 are allowable, and a notice to that effect is solicited.

Respectfully submitted,

  
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